SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 130

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR

VS.

ISIDORE COHN

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

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[Caption omitted.]

In United States District Court

THE UNITED STATES
vs.
ISADORE COHN
11859

Order to file indictment

Sept. 29, 1923

Comes the grand jury this day and return in open court an indictment against Isadore Cohn, the defendant herein, where, upon motion of the United States attorney, it is ordered by the court that said indictment be filed and the cause placed upon the docket of this court; that the amount of the bail bond be fixed at the sum of five thousand dollars, and that bench warrant be awarded for defendant, Isadore Cohn.

In United States District Court

Indictment filed

Sept. 29, 1923

NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION,
ss.

The grand jurors for the United States of America, empaneled and sworn in the District Court of the United States for the Eastern Division of the Northern District of Illinois at the September term of said court in the year nineteen hundred and twenty-three, and inquiring for said division and district, upon their oath present, that Isidore Cohn, late of the city of Chicago, in said division and district, on October 4, 1920, for the purpose and with the intent then and there on his part of defrauding the Government of the United States and the Treasury Department thereof, through a perversion and obstruction of the customhouse function thereof and of the proper and orderly administration of the laws of the United States and regulations of said department in that behalf made, unlawfully and feloniously did willfully conceal and cover up by a trick, scheme, and device material facts and cause to be made false and fraudulent statements and representations, then and there well knowing the same to be false and fraudulent, for the purpose of obtaining the approval of a claim of said Isidore Cohn to the possession of the imported merchandise hereinafter mentioned, upon and against the

Government of the United States and said Treasury Department; that is to say:

On October 1, 1920, 1,005,000 cigars, contained in 41 cases, each of said cases bearing one of the following serial numbers, to wit, 300 to 340, both inclusive, and marked "A. H., Chicago," and in 32 cases, each bearing one of the following serial numbers, to wit, 321 to 352, both inclusive, and marked "C. B. C. Co., Chicago," and in 12 cases, each bearing one of the serial numbers 1 to 12, both
4 inclusive, and marked "C. B. C. Co., Chicago," arrived at said city of Chicago from the Philippine Islands under consular manifest No. 314, for entry at the customhouse of the United States at Chicago aforesaid, consigned to order "notify Cohn Bros. Cigar Co." and then and there came into the possession of the collector of customs of the United States for the port and district of Chicago.

On October 2, 1920, The National Bank of the Republic, at Chicago aforesaid, received from the Philippine National Bank of Manila, in the Philippine Islands, a bill of lading covering said cigars and indorsed in blank by the consignor of said cigars, to wit, Aguado Hermanos, to which bill of lading a draft upon "Messrs. Cohn Bros. Cigar Co." for $29,063.32, drawn by said Aguado Hermanos, was attached, with instructions to said National Bank of the Republic to deliver said bill of lading only upon payment of said draft.

On said October 4, 1920, said draft not then having been paid, said Isidore Cohn was doing business at Chicago aforesaid under the name of Cohn Bros. Cigar Co., and, then and there well knowing all the premises aforesaid, fraudulently procured G. W. Sheldon & Co., then customhouse brokers at Chicago aforesaid, to appear at the office of said collector of customs at Chicago aforesaid, in said judicial division and district, and make entry of said cigars in behalf of said Isidore Cohn (doing business under said name of Cohn Bros. Cigar Co.) at said customhouse, and secure from said collector for him, the said Isidore Cohn, the possession of said cigars, without the production of said bill of lading, and upon the giving of said collector of a bond in the sum of $50,000.00 for the production of said bill of lading, upon false and fraudulent statements and representations, then and there and made by him the said Isidore Cohn to said G. W. Sheldon & Co., and through said G. W. Sheldon &
5 Co., as innocent agents of him the said Isidore Cohn, to said collector, to the effect that said bill of lading had not then arrived in Chicago, and that he the said Isidore Cohn was entitled to make entry and secure possession of said cigars from said collector, and then and there fraudulently concealed from said G. W. Sheldon & Co., and from said collector, the material facts that said draft had arrived at Chicago as aforesaid and was attached to said bill of lading with the condition aforesaid, and had not then been paid as aforesaid, and that he the said Isidore Cohn then and there was not

entitled to make entry and secure possession of said cigars under the circumstances aforesaid, and thereby induced said collector to deliver possession of said cigars to him the said Isidore Cohn, through said G. W. Sheldon & Co., when he the said collector would and should have refused so to do if the facts of the arrival of said bill of lading and of said draft and condition of the nonpayment of said draft, and of said Isidore Cohn's consequent want of right to make said entry or procure such possession of said cigars from said collector, had been known to said collector; which said statements and representations then and there were false, as said Isidore Cohn, when so making the same, there well knew, in that said draft had in fact arrived at Chicago as aforesaid, and in that said Isidore Cohn, by reason of the circumstances aforesaid, was not then and there entitled to make entry or obtain possession of said cigars: Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

EDWIN A. OLSON,
United States Attorney.

6 [File indorsement omitted.]

7 In United States District Court

[Title omitted.]

Order enlarging time to plead

Oct. 26, 1923

Come the United States by United States attorney, comes also the defendant Isidore Cohn, in his own proper person, and the said defendant being arraigned upon the indictment filed herein against him, and the court being fully advised in the premises, it is ordered that said defendant Isidore Cohn be given ten days to plead.

7a In United States District Court

[Title omitted.]

Appearance of counsel

Filed Nov. 2, 1923

I hereby enter the appearance of Isidore Cohn, defendant, and myself as his attorney in the above-entitled cause.

BENJ. P. EPSTEIN,
Defendant's Attorney.

State 6500; 76 West Monroe Street.
[File indorsement omitted.]

8 In United States District Court

[Title omitted.]

Demurrer to indictment

Filed Nov. 5, 1923

Now on this day comes Isidore Cohn, defendant, in his own proper person as well as by Gesas, Epstein & Leonard, his attorneys, and having heard the indictment in said cause read says that said indictment and the matters and things therein contained in manner and form as the same are therein set forth are not sufficient in law to require him to make answer unto, and this he is ready to verify; wherefore he prays judgment of the court here if he ought to be required to make answer to said indictment and prays that he may be hence dismissed.

And the defendant further assigns the following special causes for demurrer to the said indictment:

1. The matters and things alleged in said indictment do not constitute a crime against the United States of America.

2. The matters and things alleged in said indictment do not constitute a crime against the United States of America within the meaning of Section 35, Criminal Code.

3. No crime within the meaning of the laws of the United States or the regulations of the Treasury Department thereof is
9 alleged in said indictment with the certainty required by law.

4. Said indictment is insufficient in law for uncertainty, ambiguity, and evasiveness.

5. Said indictment is insufficient in law for the reason that the principal allegations therein stated are conclusions of law.

ISIDORE COHN, *Defendant.*
By GESAS, EPSTEIN & LEONARD,
Attorneys for Defendant.

[File indorsement omitted.]

10 In United States District Court

[Title omitted.]

Judgment

June 7, 1924

This cause coming on to be heard on the demurrer of the defendant, to the indictment filed herein against him come the parties by their attorneys and after having heard the arguments of counsel the court being fully advised in the premises, sustains said demurrer, and thereupon it is considered and ordered by the court that said

indictment be, and it hereby is, dismissed and that the defendant go hence without day, discharged from further prosecution thereunder.

11 [Title omitted.]

Judge's certificate

Filed June 23, 1924

This is to certify that in entering order on the seventh day of June, A. D. 1924, in the above entitled cause, sustaining the demurrer and dismissing the proceedings, I was of the opinion that there was no statute of the United States making the matters charged in the indictment a crime. No question of an interpretation of the indictment was involved in my decision.

CARPENTER,
Judge of the United States District Court
for the Northern District of Illinois.

13 June, 1924.

[File indorsement omitted.]

12 In United States District Court

[Title omitted.]

Notice of petition for writ of error

Filed June 23, 1924

To Gesas, Epstein & Leonard, 924-76 W. Monroe Street, Chicago, Illinois, attorneys for defendant:

Please take notice that on Monday, June 23, 1924, at the opening of court in the forenoon, or as soon thereafter as counsel can be heard, I shall appear before his honor, Judge George A. Carpenter, in his court room in the Federal Building, Chicago, Illinois, and ask leave of court to file the petition of the United States for a writ of error, together with an assignment of errors, and shall enter the motion of the United States for the issuance of a writ of error directed to the Supreme Court of the United States, and for the issuance of a citation to the above named defendant in accordance with said writ of error, and shall also enter a motion that the court extend the time allowed the United States for filing the record in the Supreme Court to and including July 23, 1924; at which time and place you may appear if you see fit, etc.

EDWIN A. OLSON,
United States Attorney.

Received a copy of the above notice this 21st day of June, A. D. 1924.

GESAS, EPSTEIN & LEONARD,
Attorneys for Defendant.

[File indorsement omitted.]

13 In United States District Court

[Title omitted.]

Order allowing writ of error

June 23, 1924

On motion of the United States of America by Edwin A. Olson, United States attorney for the Northern District of Illinois, Eastern Division thereof, and upon notice duly served upon counsel for defendant, leave is hereby granted the United States of America to file its petition for writ of error and its assignment of errors in the above entitled cause, and the writ of error is hereby allowed by the court on behalf of the United States to the Supreme Court of the United States;

And it is further ordered that a citation to the Supreme Court of the United States be issued in the above entitled cause; and

It is further ordered that the time within which the record and the bill of exceptions in the above entitled cause be filed with the Clerk of the Supreme Court of the United States, be, and the same is hereby, enlarged to and including July 23, 1924.

CARPENTER,
Judge of the United States District Court.

Dated at Chicago, Illinois, this 23d day of June, A. D. 1924.

14 In United States District Court

[Title omitted.]

Assignment of errors

Filed June 23, 1924

Now comes the United States of America, by Edwin A. Olson, United States attorney for the Northern District of Illinois, and says that, in the aforesaid proceedings, and in the decision and judgment of said court sustaining the demurrer of the defendant, Isidore Cohn, to the indictment herein, there is manifest error in this, to wit:

1. The District Court erred in sustaining the demurrer to the indictment and to each count thereof.

2. The District Court erred in construing the statute upon which the indictment is founded.

3. The District Court erred in rendering judgment in favor of the defendant and against the plaintiff based upon the construction of the statute upon which the indictment is founded.

4. The District Court erred in entering judgment in favor of the defendant and against the plaintiff.

5. The District Court erred in sustaining the demurrer to the indictment and to each count thereof, and in dismissing, vacating, and setting aside the indictment based upon a construction of the statute upon which the indictment was founded, and in holding that there was no statute of the United States making matters charged in the indictment a crime.

15 Wherefore the said United States of America, plaintiff, prays that the aforesaid judgment may be reversed.

EDWIN A. OLSON,
United States Attorney for the Northern District of Illinois, Eastern Division thereof, Attorney for plaintiff.

Dated this 23rd day of June, A. D. 1924.
[File indorsement omitted.]

16 In United States District Court

[Title omitted.]

Petition for writ of error

Filed June 23, 1924

To the Honorable George A. Carpenter, Judge of the District Court of the United States for the Northern District of Illinois, Eastern Division:

Your petitioner, the United States of America, by Edwin A. Olson, United States attorney for the Northern District of Illinois, Eastern Division thereof, respectfully represents that on the 7th day of June, A. D. 1924, at the regular June term, 1924, of said District Court of the United States for the Northern District of Illinois, Eastern Division thereof, a final decision or judgment was entered in said court sustaining the demurrer of the defendant, Isidore Cohn, filed to an indictment which the grand jurors of the United States empaneled and sworn in said District Court of the United States for said division and district had returned as a true bill against said Isidore Cohn for a violation of section 35 of the Criminal Code of the United States.

Your petitioner further represents that the said decision or judgment sustaining said demurrer is based upon a con-
17 struction of the statute upon which the said indictment is founded, to wit, section 35 of the said Criminal Code.

Your petitioner further represents that as he is advised this court erred in construing said section 35 of the said Criminal Code, and erred in sustaining said demurrer because of said construction.

Your petitioner further shows that the act of March 2, 1907, chapter 2564, 34 Statutes at Large, 1246, provides that:

"A writ of error may be taken by and on behalf of the United States from the District or Circuit Court direct to the Supreme

Court of the United States in all criminal cases and in the following instances, to wit, from a decision or judgment quashing, setting aside, or sustaining a demurrer to any indictment, or any count thereof, where such decision or judgment is based upon the invalidity or construction of the statute upon which the indictment is founded."

Wherefore your petitioner respectfully prays that a writ of error may be granted by this Honorable Court to your petitioner, authorizing and directing the presentation of the record herein direct to the Supreme Court of the United States, as by law provided, and that the clerk of this court be authorized and directed to certify said record to the Supreme Court of the United States, as by law provided, to the end that the errors complained of, if any have occurred, may be duly corrected and full and speedy justice done in the premises.

EDWIN A. OLSON,
United States Attorney for the Northern District of Illinois, Eastern Division thereof, Attorney for Plaintiff.

Dated: Chicago, Illinois, June 23d, A. D. 1924.

[File indorsement omitted.]

18 In United States District Court

Writ of error

Filed June 23, 1924

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the Honorable the Judges of the District Court of the United States for the Northern District of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, or some of you, between the United States of America, plaintiff, and Isidore Cohn, defendant, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable William Howard Taft, Chief Justice of the United States, the 23rd day of June, in the year of our Lord, one thousand nine hundred and twenty-four.

[SEAL.] JOHN H. R. JAMAR,
Clerk of the District Court of the United States for the Northern District of Illinois.

Allowed by CARPENTER,
Judge of the District Court of the United States, Northern District of Illinois, Eastern Division.
Dated Chicago, Illinois, this 23rd day of June, A. D. 1924.

[File indorsement omitted.]

19 In United States District Court

Clerk's certificate

I, John H. R. Jamar, clerk of the District Court of the United States, for the Northern District of Illinois, do hereby certify the above and foregoing to be a true, complete and correct transcript of the record in case Number 11859, wherein the United States is plaintiff and Isidore Cohn is defendant, prepared in accordance with the præcipe filed herein, as same appears from the records and files in said cause now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office at Chicago, in said district, this thirtieth day of June, A. D. 1924.

[SEAL.] JOHN H. R. JAMAR,
Clerk.

20 [Title omitted.]

In United States District Court

Præcipe for transcript of record

To: John H. R. Jamar, Esq., clerk of the District Court of the United States, for the Northern District of Illinois, Eastern Division

Please prepare a certified copy of the record of the court in the above-entitled cause, including therein the following:

1. September 29, 1923, order to file indictment.
2. September 29, 1923, indictment.
3. October 26, 1923, order granting defendant ten days in which to plead.
4. November 2, 1923, appearance of defendant.
5. November 5, 1923, demurrer.
6. June 7, 1924, order sustaining demurrer.

7. June 13, 1924, certificate of judge.
8. Notice of motion of allowance of writ of error, etc.
9. June 23, 1924, order granting leave to United States attorney for writ of error, allowance of writ of error, and citation of
21 the United States to the Supreme Court of the United States, and order extending time to July 23, 1924, to file record in the United States Supreme Court.
10. June 23, 1924, petition of United States attorney for writ of error and assignment of errors.
11. June 23, 1924, præcipe for record on writ of error.

EDWIN A. OLSON,
United States Attorney for the
Northern District of Illinois, Eastern Division.

Dated at Chicago, Illinois, this day of June, A. D. 1924.

(Indorsed on cover:) File No. 30,490. N. Illinois D. C. U. S. Term No. 130. The United States of America, Plaintiff in Error, v. Isidore Cohn. Filed July 8th, 1924. File No. 30,490.

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